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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,770	04/27/2001	Tadayuki Suzuki	0425-0835P	2822

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER

CLARDY, S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/05/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/842,770

Applicant(s)  
Suzuki et al

Examiner  
S. Mark Clardy

Art Unit  
1616



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 29, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-22 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some\* c) ☐ None of:

- ☒ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other:  |

Art Unit: 1616

Claims 8-22 are now pending in this application; claims 1-7 have been canceled.

Applicants' claims are drawn to a plant activating agent<sup>1</sup> (claims 8-13), and method of applying the agent(s) to plants to assist the plant growth (claims 14-22). Improved plant growth is determined by a 5% "improved reproduction of green cells"<sup>2</sup> (claim 8), or any of five other criteria (claim 9): a "2 points" improved degree of chlorophyll value, a 10% increase in plant weight, a 5% improved degree of leaf area, a 5% increase in [leaf] blade ascorbic acid concentration, or a 10% decrease in [leaf] blade nitrate ion concentration. All of the methods of determining improved plant growth appear to be art accepted, conventional measures for assessing plant growth improvement; each method described in the specification makes use of readily available instruments used in conventional laboratory analysis of plant materials.

Inasmuch as the term "SPAD value" as described in the specification refers to an art accepted means of determining chlorophyll concentration, claim 9 would be clearer if this term were used in the claim.

The rejections under 35 USC 101, 102, and 112 are withdrawn in response to applicants' Amendment A filed July 29, 2002.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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<sup>1</sup>Claim 1: fatty acids, organic acids, lipids, alcohols, amines, amino acids, proteins, nucleic acids, natural extracts, fermentation residues, vitamins

<sup>2</sup> $100(P_1 - P_0)/P_0$ , in which P represents the reproduction amount of green cells.

Art Unit: 1616

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the following: Yamashita (US 5,549,729), Sampson (US 4,436,547), or Sakagami et al (US 6,004,906).

Yamashita teaches the utility of a wide variety of compounds, including those recited in claim 8, as being useful in plant growth stimulating compositions; see columns 7-9 and the table in column 3: vitamins and cofactors (several listed), seaweed extract, yeast extract, citric acid, various other acids, sugar alcohols, nucleotides and bases.

Sampson teaches the utility of various additives for use with plant growth regulators for improving the growth characteristics of cereal crops. Among the additives are organic acids, vitamins or cofactors, purine or pyrimidine nucleosides or nucleotides, fatty acids, naturally occurring fats and oils, and amino acids (col 2, lines 1-39).

Sakagami et al teach plant growth factors comprising peptides which are useful for promoting cell growth in plants (columns 1-2).

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have used any of the disclosed materials in Yamashita, Sampson, or Sakagami et al in compositions for enhancing plant growth. Determination of appropriate concentration ranges to achieve any given growth criteria would be within the skill level of the ordinary artisan. Further, it appears that applicants' threshold values are simply arbitrarily selected cut off points for plant growth, chlorophyll content, nitrate ion concentration, etc. It is well-


Art Unit: 1616

established that merely selecting proportions and ranges is not patentable absent a showing of criticality. In re Becket, 33 U.S.P.Q. 33 (C.C.P.A. 1937). In re Russell, 439 F.2d 1228, 169 U.S.P.Q. 426 (C.C.P.A. 1971).

No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.

  
**S. Mark Clardy**  
**Primary Examiner**  
**AU 1616**

October 31, 2002